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June 16, 1998

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Magalie Roman Salas  
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Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

**Re: Petition on Defining Certain Incumbent LEC Affiliates as  
Successors, Assigns, or Comparable Carriers Under  
Section 251(h) of the Communications Act;  
CC Docket No. 98-39**

Dear Ms. Salas:

On behalf of the Competitive Telecommunications Association ("CompTel"), the Florida Competitive Carriers Association ("FCCA"), and the Southeastern Competitive Carriers Association ("SECCA"), I am writing to notify you that Genevieve Morelli, Executive Vice-President and General Counsel of CompTel, and I made an *ex parte* presentation today regarding this proceeding to James Casserly, Legal Advisor to Commissioner Ness. We used the attached handouts during this presentation.

Respectfully submitted,

*David Sieradzki*

David L. Sieradzki  
Counsel for CompTel, FCCA, and  
SECCA

Enclosures

cc: James Casserly  
Parties on attached service list

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List A B C D E

June 1998

**Competitive Telecommunications Association, Florida Competitive Carriers Association, and Southeastern Competitive Carriers Association**

**Section 251(h) Petition – CC Docket No. 98-39**

1. **Introduction: Who We Are**
2. **Background: ILECs are Setting Up “CLEC” Affiliates to Provide Local Service Within the ILECs’ Service Areas**
  - BellSouth, Ameritech, GTE, are setting up *alter ego* “CLECs.”
  - These entities provide the same local exchange and exchange access services as the ILECs, in the same geographic areas, using the same (or similar) brand names, and using the same corporate resources.
  - It is clear that the ILEC and “CLEC” entities are ultimately subject to the same management, and are operated to advance common corporate objectives. (BellSouth describes its BellSouth BSE unit as a form of “brand extension.”)
3. **The Problem: ILEC Evasion of Section 251(c) Interconnection and Local Competition Obligations Through “CLEC” Affiliates**
  - ILECs can evade Section 251(c)(4) resale obligations by offering customer-specific contract service arrangements and other services, formerly available from the ILECs, through their “CLEC” affiliates.
  - In this way, ILECs can use their “CLECs” to impose a price squeeze on *real* CLECs that depend on service resale, with very limited risks to the overall ILEC corporation’s bottom line.
  - ILECs can funnel investment in upgraded network facilities into “CLECs” in order to evade their Section 251(c)(3) unbundled network element obligations.
  - ILECs could evade FCC access charge and price cap rules by offering service through “CLECs,” purportedly on a non-dominant basis.
  - Some state commissions have denied certification to such in-region ILEC-“CLECs,” or placed restrictions on such certifications. The fact that the issue has been presented to so many state commissions demonstrates the urgent need for FCC action.

#### 4. The Solution: Section 251(h)

- Issue a declaratory ruling establishing a *rebuttable presumption* that, under Section 251(h)(1), entities will be considered “successors” or “assigns” of ILECs -- and will be subject to ILECs’ Section 251(c) and dominant carrier obligations -- if they are:
  - ILEC affiliates (Section 3(1) of the Act);
  - Provide wireline local exchange or exchange access service in same geographic area served by the ILEC; and
  - Operate under the same or similar brand names (shows transfer of resources that are of value in providing local service).
- In the alternative, initiate a rulemaking to establish, by rule, a rebuttable presumption that such entities are “comparable carriers” under Section 251(h)(2).
- The Commission has authority to adopt the requested rulings:
  - Section 251(h) and relevant case law support piercing the corporate veil to prevent evasion of regulatory rules through *alter ego* corporate entities.
  - The *Non-Accounting Safeguards Order* does not squarely address the circumstances raised by our petition, but it generally provides support for the relief requested.

#### 5. The Context: Related Proceedings

- ILEC resistance to local competition: state proceedings; Supreme Court review of *Local Competition Order*; Section 271 applications.
- Section 706 Petitions of BOCs, ALTS, and APT, and Upcoming Section 706 Proceeding.
- LCI Structural Separation Petition.

### STATE CONSIDERATION OF ILEC IN-REGION "CLEC" AFFILIATES

STATE	ILEC	DECISION	DATE
AL	BellSouth	Permitted.	2/2/98
CA	Pacific Bell	Withdrawn after negative ALJ preliminary decision	5/6/97
CA	GTE	Permitted for wireless affiliate.	2/23/96
CT	SNET	Permitted in context of restructured relationship between ILEC and retail affiliate.	6/25/97
FL	BellSouth	Proceeding in progress - no decision issued.	N/A
FL	GTE	Permitted, but did not analyze relationship with ILEC.	2/24/97
GA	BellSouth	Permitted with conditions (e.g., ad disclosures; separate books, records, accounts; separate officers, directors, employees; no creditor access to ILEC assets; independent audits; arms-length transactions)	3/5/98
KY	BellSouth	Rejected in BellSouth service areas.	6/8/98
MI	Ameritech	Rejected until FCC grants ILEC 271 relief.	8/28/96
NC	GTE	Permitted, but did not analyze relationship with ILEC.	4/16/97
SC	GTE	Permitted, but did not analyze relationship with ILEC.	9/12/97
SC	BellSouth	Permitted, but did not analyze relationship with ILEC.	12/23/97
TX	GTE	Rejected in GTE service areas.	10/30/97
WI	Ameritech	Permitted only until FCC ILEC 271 relief, for the provision of local service through resale only, and subject to conditions (e.g., no preferential treatment by ILEC, no access to ILEC CPNI or network information, no ILEC subsidization, affiliate transaction requirements).	11/26/96

### STATE DECISIONS ON SPRINT "CLECS"

FL	Sprint	Permitted, but did not analyze relationship with ILEC.	12/27/95
KS	Sprint	Permitted, but did not analyze relationship with ILEC.	8/7/96
MO	Sprint	Not applicable -- certification not sought within Sprint ILEC service area.	2/28/97
NB	Sprint	Not applicable -- certification not sought within Sprint ILEC service area.	2/28/97
NV	Sprint	Permitted with conditions (e.g., ad disclosures; separate books, records, accounts; separate officers, directors, employees; no creditor access to ILEC assets; independent audits; arms-length transactions)	11/7/97
NJ	Sprint	Permitted, but did not analyze relationship with ILEC.	7/17/96
NC	Sprint	Permitted, but did not analyze relationship with ILEC.	3/7/97
PA	Sprint	Permitted, but did not analyze relationship with ILEC.	12/5/96
SC	Sprint	Permitted, but did not analyze relationship with ILEC.	12/3/96
TN	Sprint	Permitted, but did not analyze relationship with ILEC.	10/3/96
VA	Sprint	Permitted, but did not analyze relationship with ILEC.	11/8/96
WA	Sprint	Permitted, but did not analyze relationship with ILEC.	7/9/97

# EXHIBIT 5

## Income Statement

BellSouth BSE, Inc.

PRELIMINARY

(All numbers in 000s)

			1997	1998	1999	2000	2001	2002
<b>Customers (000s)</b>								
Number of Customers								
Mass Market								
Business								
Number of Access Lines								
Mass Market								
Business								
(0000s)								
<b>Revenue</b>								
Mass Market								
Local/Intrastate								
Long Distance								
Cellular								
Internet								
Video								
Business								
Local/Intrastate								
Long Distance								
<b>Total Revenue</b>								
<b>Expense</b>								
Mass Market								
Cost of Services								
Sold (COSS)								
Sales, Service,								
General and Admin								
(SSG&A)								
Business								
COSS								
SSG&A								
Common								
SSG&A								
<b>Total Expense</b>								
<b>Gross Margin</b>								

Income Statement

BellSouth BSE, Inc.

PRELIMINARY

(All numbers in 000s)

	1997	1998	1999	2000	2001	2002
Depreciation	885	2,008	4,296	7,386	9,849	10,521
Property Tax	29	83	184	291	321	289
Gross Receipts Tax	-	2,839	17,902	26,828	35,202	41,423
Uncollectibles	-	8,462	88,675	74,799	87,784	82,051
Earnings Before Interest and Taxes	(28,982)	(181,898)	121,868	366,018	580,186	637,160
Taxes	(10,137)	(87,160)	47,410	119,347	230,177	385,488
Net Income	(18,825)	(124,726)	74,155	186,671	380,021	571,661
Free Cash Flow	(18,100)	(123,946)	(83,012)	80,795	273,328	494,845
Capital Spending						
Mass Market	1,901	528	846	162	1,911	473
Business	550	2,321	3,842	11,462	557	2,321
Common	3,189	5,910	9,856	8,233	3,189	5,910
Total Capital	5,650	8,759	14,144	18,858	5,667	8,704

# Balance Sheet

BellSouth BSE, Inc.

All Numbers in \$000s.

	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
<b><u>Assets</u></b>						
<b>Current Assets</b>						
Cash	-	-	-	-	-	-
Accounts Receivable	-	53,618	332,490	508,636	664,932	782,437
Inventory	-	-	-	-	-	-
Total Current Assets	-	53,618	332,490	508,636	664,932	782,437
<b>Property, Plant and Equipment</b>						
Equipment	5,650	14,409	28,553	45,411	51,078	59,782
Accumulated Depreciation	565	2,571	6,867	14,264	23,913	34,433
Net PPE	5,085	11,838	21,686	31,147	27,166	25,348
<b>Total Assets</b>	<b>5,085</b>	<b>65,456</b>	<b>354,176</b>	<b>539,783</b>	<b>692,097</b>	<b>807,785</b>
<b><u>Liabilities</u></b>						
Accounts Payable	4,596	65,156	195,790	284,443	349,589	388,751
Deferred Taxes	215	805	1,725	2,802	3,278	2,987
<b>Total Liabilities</b>	<b>4,811</b>	<b>65,962</b>	<b>197,515</b>	<b>287,245</b>	<b>352,868</b>	<b>391,739</b>
<b><u>Stockholders' Equity</u></b>						
<b>Total Stockholders' Equity</b>	<b>275</b>	<b>(506)</b>	<b>156,661</b>	<b>252,538</b>	<b>339,230</b>	<b>416,047</b>

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